

## **NOTICE OF PROPOSED REGULATIONS**

### **California Code of Regulations Title 15, Crime Prevention and Corrections Department of Corrections and Rehabilitation**

**NOTICE IS HEREBY GIVEN** that the Secretary of the California Department of Corrections and Rehabilitation (CDCR or the Department), pursuant to the authority granted by Government Code Section 12838.5 and Penal Code (PC) Section 5055, and the rulemaking authority granted by PC Section 5058, in order to implement, interpret and make specific PC Section 5054, proposes to amend Sections 3000, 3076.1, 3076.3, 3375, 3375.1, 3375.2, 3375.3, 3375.4, 3375.5, 3377.2 and 3521.2, in the California Code of Regulations (CCR), Title 15, concerning the Department's Inmate Classification Score System.

#### **PUBLIC HEARING:**

Date and Time: **September 17, 2012 - 10:00 a.m. to 11:00 a.m.**  
Place: Department of Corrections and Rehabilitation  
Kern Room  
1515 S Street – North Building  
Sacramento, CA 95811  
Purpose: To receive comments about this action.

#### **PUBLIC COMMENT PERIOD:**

The public comment period will close **September 17, 2012, at 5:00 p.m.** Any person may submit public comments in writing (by mail, by fax, or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the CDCR, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 324-6075; or e-mail at [RPMB@cdcr.ca.gov](mailto:RPMB@cdcr.ca.gov) before the close of the comment period.

#### **CONTACT PERSON:**

Please direct any inquiries regarding this action to:

**Timothy M. Lockwood, Chief  
Regulation and Policy Management Branch  
Department of Corrections and Rehabilitation  
P.O. Box 942883, Sacramento, CA 94283-0001  
Telephone (916) 445-2269**

In the event the contact person is unavailable, inquires should be directed to the following back-up person:

**Josh Jugum  
Regulation and Policy Management Branch  
Telephone (916) 445-2228**

Questions regarding the substance of the proposed regulatory action should be directed to:

**Jill Brown  
Classification Services Unit  
Telephone (916) 323-3659**

**LOCAL MANDATES:**

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500 - 17630.

**FISCAL IMPACT STATEMENT:**

- Cost to any local agency or school district that is required to be reimbursed: *None*
- Cost or savings to any state agency: *None*
- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

**EFFECT ON HOUSING COSTS:**

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

**COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:**

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:**

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

**EFFECT ON SMALL BUSINESSES:**

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business because they are not affected by the internal management of state prisons.

**ECONOMIC IMPACT ASSESSMENT:**

The Department has determined that the proposed regulation will have no affect on the creation of new, or the elimination of existing, jobs or businesses within California, or affect the expansion of businesses currently doing business in California. The Department has determined that the proposed regulations will have no affect on the health and welfare of California residents, worker safety, or the state's environment, because they relate strictly to the internal management of CDCR institutions and the classification and housing of inmates.

**CONSIDERATION OF ALTERNATIVES:**

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law, than the proposed regulatory action. Interested persons are invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

**AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:**

The Department has prepared, and will make available, the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed

to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website <http://www.cdcr.ca.gov>.

#### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS:**

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's contact person.

#### **AVAILABILITY OF CHANGES TO PROPOSED TEXT:**

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:**

PC Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

PC Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management, and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

This action will:

- Revise the Department's Inmate Classification Score System (ICSS), consistent with the findings and recommendations of the *Expert Panel Study of the Inmate Classification Score System*. The ICSS is used to place inmates into the most appropriate housing facilities and work assignments based on objective factors that measure how much of a risk the inmate presents to the safety and security of the institution, staff, other inmates and the public.
- Adopt new definitions for the terms "Non-secure Facility" and "Security Concern," amend several existing definitions for improved clarity, and repeal definitions of terms which are no longer applicable.
- Amend the "cut-off points" of the classification placement score system which determine the security level to which an inmate will be assigned. The amendments will allow inmates with higher scores to be assigned to lower security levels compared to the previous cut-off points.
- Establish a new "Security Concern" Administrative Determinant to indicate that an inmate presents a heightened security risk. Administrative determinants are used, when case factors indicate, to override an inmate's classification placement score.
- Amend the three Department forms (839, 840, 841), as well as the instructions for their completion, used in the inmate classification process to compute the inmate's classification placement score, and incorporate these forms by reference into the regulation text.
- Amend and simplify regulatory provisions related to Close Custody by merging previously separate subsections.

- Establish a new provision wherein an inmate who otherwise meets the criteria for assignment of Close Custody status may have that status waived if the inmate is determined to have a permanent and severe physical limitation that diminishes the need for direct and constant supervision. Safeguards are provided in case the inmate recovers or subsequently demonstrates a need for direct and constant supervision.
- Amend existing provisions establishing minimum periods in which inmates serving the most serious and lengthy sentences must be assigned Close Custody status.
- Establish provisions to evaluate an inmate's custody designation in cases where a court has either lengthened or reduced an inmate's sentence, or where an error has been made in the initial computation of the inmate's time to serve.
- Amend existing provisions regarding Close Custody status for inmates who have a history of escape attempts or who have been found guilty of specified offenses while in custody.
- Establish provisions for the implementation of the revised Close Custody regulations.

The Department anticipates that these proposed regulations will improve the system used to classify inmates, and result in more appropriate placement of inmates within the California prison system. The proposed changes will reduce the "over-classification" of inmates and increase inmate access to work assignments, substance abuse treatment, and other rehabilitative opportunities.

The Department has determined that these proposed regulations are not inconsistent or incompatible with existing state laws and regulations.